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5-7-2018

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Recommended Citation

Brooke D. Coleman, #MeToo Justice (Review of "#MeToo, Time's Up, and Theories of Justice" by Lesley Wexler, Jennifer Robbennolt & Colleen Murphy) *Jotwell: J. Things We Like (Lots)* (2018).
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#MeToo Justice

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Date : May 7, 2018

Lesley Wexler, Jennifer Robbennolt & Colleen Murphy, *#MeToo, Time's Up, and Theories of Justice*, available at [SSRN](#).

Do we really need to hear more about #MeToo or have we reached the point of saturation? Given the subject of my review, it should come as no surprise that I think there is more to say. What might be a surprise, however, is that I also believe we are approaching saturation. Exhibit A is the backlash that is already in full swing. Overexposure could be bad for #MeToo, but I do not think it will be. The culture of harassment, abuse, and diminishment in which women have existed and continue to exist requires nothing short of a counter-saturation. I say bring it on.

This is where this important article by Lesley Wexler, Jennifer Robbennolt, and Colleen Murphy comes in. The authors interrogate what justice might look like for this historic movement. They conclude that the concept of transitional justice (with some nods to principles of restorative justice) holds great promise. While individualized justice is critical, the authors argue that #MeToo should also pursue and achieve systemic change. The authors land on transitional justice, but caution that its promise will be realized only if two things happen. It must include and address the most marginalized women, and it should take a holistic view of what types of changes will lead to societal transformation.

[Tarana Burke](#) started the #MeToo movement well before Harvey Weinstein headlines made their way into our collective consciousness. Burke focused her movement on women of color and marginalized people, with a goal of building community among survivors. It was not until a famous, white, cisgender woman—Alyssa Milano—asked Twitter users to share their stories of sexual harassment and assault using the #MeToo hashtag that the current iteration of the movement was born.

This genesis story is telling. While Milano credited Burke with the hashtag and the original movement, the real power differentials among women are apparent—the movement did not garner national attention until a privileged white woman did something. This lack of focus on intersectionality led to the immediate question of whether #MeToo could really change the status quo. Public shaming may have taken down Harvey Weinstein or Bill O'Reilly in the relative short term, and a (second) jury in our criminal justice system may have convicted Bill Cosby of aggravated assault against one of his many accusers. But what about women who lack the power or the opportunity to take on such giants? Moreover, what about the structures and systems that protected these men and so many others from a day of reckoning? The Time's Up initiative, created by a group of Hollywood elite, has the potential to move beyond this initial step of calling out the behavior and shaming it. The question the authors wrestle with is how.

The authors first review restorative justice theory, which they define as “a loose collection of practices or mechanisms that share a number of core commitments,” focusing on “offender accountability, harm repair, and reintegration.” Apologies can often go wrong and seldom go right, as in cases in which those accused of sexual harassment blame the victims for being overly sensitive or thin-skinned. Although there are many possibilities for harm repair, such as community activities, therapy, public statements of accountability, and cessation of the behavior, the main remedy remains monetary damages. Unfortunately, women cannot seek money publicly or privately—they are criticized for doing so publicly and their voices are often silenced through non-disclosure agreements if they settle privately. There must be reintegration for both the victim and the perpetrator. While apologies and accountability are important first steps for offenders, the quickness with which some have been reintegrated into their communities and careers (think Mel Gibson) leads the authors to emphasize the primacy of full reintegration of victims.

After assessing how restorative justice values might apply to #MeToo, the authors turn their attention to transitional justice. Restorative justice tends to focus on the perpetrator and the victim, which, while critical, does not necessarily lead to systemic change. Transitional justice can link this individualized restorative response with institutional reform.

Transitional justice is defined as “a broad body of multidisciplinary scholarship and practice concentrating on responses to wrongdoing in contexts of transitions toward democracy and away from extended periods of conflict or repression.” The authors argue that the #MeToo movement is analogous to paradigmatic transitional justice in three important ways. Transitional justice focuses not on the isolated criminal acts, but instead on the “patterns of wrongdoing” that have been normalized. The patterns of wrongdoing occur within a broader background of “pervasive structural inequality.” Finally, the goal of transitional justice is explicit—it is to link the response of the individualized wrongs to the goal of broader institutional change.

Analog to #MeToo are readily apparent. The focus of the movement is the normalized way in which women have been and are treated. That half a million people responded to the #MeToo call within twenty-four hours of Milano’s initial tweet is telling. The way women are treated is systemic, and women have adapted to endure it. Women around the world face obstacles to equality, and while the degree may vary, the fact of inequality between men and women cannot be denied. Finally, while the #MeToo movement has led some men to lose their jobs, with each resignation comes another attempt to minimize or downplay the scope of the issue. Harvey Weinstein is just one of few bad men, for example. Transitional justice forces a collective counter to these forms of denial while also forcing a recognition of the scope of the issue.

The authors acknowledge that the transitional justice with which we are most familiar—truth and reconciliation commissions in war-torn countries—differ from the #MeToo movement in important ways. But the ideas behind transitional justice still hold promise. The authors also do not commit to what form #MeToo transitional justice will take. Instead, they caution that any attempts must endeavor not just to acknowledge, but to actively include marginalized women, and they argue that the movement must take a holistic approach to the variable challenges that have surfaced.

For what it is worth—and as you might have already surmised—I am a proud feminist. As [Chimamanda Ngozi Adichie](#) expressed in 2014, we all really should be. Treating humans equally is not radical at all; treating humans differently based on gender is what should be horrifying to our society. The #MeToo movement is only beginning to chip away at this paradox, but with work along the lines of what Wexler, Robbennolt, and Murphy are producing, I am hopeful that significant change is possible.

Cite as: Brooke D. Coleman, *#MeToo Justice*, JOTWELL (May 7, 2018) (reviewing Lesley Wexler, Jennifer Robbennolt & Colleen Murphy, *#MeToo, Time’s Up, and Theories of Justice*, available at SSRN), <https://courtslaw.jotwell.com/metoo-justice/>.